IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2007

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THE HONOURABLE MR. JUSTICE P.K.MISRA
and
THE HONOURABLE MR. JUSTICE K.MOHAN RAM

Habeas Corpus Petition No.1188 of 2006

K.P.Jayaraman .. Petitioner

-Vs.-

1. The District Magistrate and
District Collector
Villupuram District
Villupuram.

2. The State of Tamil Nadu
Rep. By its Secretary to Government
Prohibition and Excise Department
Fort St. George, Chennai - 9. .. Respondents

Prayer.:- Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus directing the respondents to produce the detenu Parthiban (son of K.P.Jayaraman) 's body (now confined in Central Prison at Cuddalore) in this Court and set him at liberty forthwith and also to call for the records and to set-aside the order of detention issued by the first respondent herein in C2/40094/96 dated 06.09.2006.

For Petitioner : No appearance.
For Respondents : Mr. M.Babu Muthu Meeran,
Additional Public Prosecutor

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K.MOHAN RAM, J.

Learned counsel for the petitioner was absent. We have heard the learned Additional Public Prosecutor for the respondents.

2. The order of preventive detention made under the Tamil Nadu Act 14 of 1982 passed against the detenu on the ground that he is a goonda is in question in the above Habeas Corpus Petition. The above

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Habeas Corpus Petition has been filed by the father of the detenu.

3. In the grounds of detention, Villupuram Taluk Police Station, Crime No.606 of 2006 registered against the detenu and others for offences under Sections 147, 148, 341, 506 (ii) and 302 of the Indian Penal Code has been referred to. In the grounds of detention, a reference has also been made to the ground case registered in Villupuram Taluk Police Station in Crime No.614 of 2006 wherein it is alleged that the detenu had committed offences under Sections 332, 506 (ii) and 307 of the Indian Penal Code. In paragraph 5 of the grounds of detention, the Detaining Authority has observed as follows:-

> "5. I am aware that Thiru.Parthiban son of Jayaraman is in remand in Central Prison, Cuddalore in Cr. No.614 of 2006 of Villupuram Taluk Police Station and has not filed any bail application before the lower court or in the High Court till date. However I am aware that, there is a real possibility of his coming out on bail by filing a bail application before the same court or higher court, since in similar cases bail are granted by the courts after a lapse of time. If he comes out on bail, he will indulge in such future activities which will be prejudicial to the maintenance of public order. Further the recourse to normal criminal law will not have the desired effect of, effectively preventing him from indulging in such activities which are prejudicial to the maintenance of Public Order. On the material placed before me, I am satisfied that the said Thiru.Parthiban son of Jayaraman is a "Goonda" and that there is a compelling necessity to detain him in order to prevent him from indulging such further and in future which are prejudicial to the maintenance of public order under the provisions of Tamil Nadu Act 14 of 1982."

4. A perusal of the above observation shows that the Detaining Authority has made a reference to the fact that the detenu has been remanded by the Judicial Custody in connection with the ground case, namely, Crime No.614 of 2006. However, when admittedly the detenu was also in custody in connection with the second adverse case, viz., Villupuram Taluk Police Station in Crime No.606 of 2006 wherein a case has been registered against the detenu and others under Sections 147, 148, 341, 506 (ii) and 302 of the Indian Penal Code is punishable with death sentence, therefore it is apparent that the allegation in the adverse case is more serious when compared to the allegations in the ground case.

5. In the above said factual background, we are of the considered view that the Detaining Authority has not applied his mind to the relevant facts and circumstances before coming to the conclusion that

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there was an imminent possibility of the detenu being released on bail.

6. In this context, it will be useful to refer to a decision rendered in Habeas Corpus Petition No.841 of 2006, wherein the order of detention was quashed by an order dated 21.11.2006. In the said order, it is observed as follows:-

> "4.The learned counsel appearing for the State also placed reliance on the decision reported in 2006 (2) MLJ (CRL) 592 (SIVAKUMAR VS. STATE OF TAMIL NADU REP. BY ITS SECRETARY TO GOVERNMENT, PROHIBITION AND EXCISE DEPARTMENT AND ANOTHER). In the said judgment, the decision reported in 2006 (3) CTC 650 (REVATHY VS. STATE OF TAMILNADU) has been referred to, wherein it is observed that if the Detaining Authority is aware of the fact that the person is in remand in both the cases, where the alleged offence in the adverse case is less serious than the offence in the ground case, it cannot be said that there is any non application of mind. We do not think that there is really a conflict between two decisions, inasmuch as in the latter case, the alleged offence in the adverse case is less serious and therefore, there was no question of non application of mind, as observed by the Division Bench. On the other hand, it is very much evident from the discussion that where the offence alleged in the adverse case is equally serious or more serious, the fact that the person is in remand in connection with equally or more grave offence is not brought to the notice of the Detaining Authority, is a factor, which vitiates the subjective satisfaction."

7. In the instant case, as pointed out by us, the offences allegedly committed by the detenu and others in the adverse case are more serious in nature, but the Detaining Authority has not at all made any reference to the fact that the detenu was in remand in that case. Therefore, we are of the view that the subjective satisfaction arrived at by the detaining authority is vitiated. Hence the order of detention is liable to be quashed and accordingly the same is quashed.

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The detenu shall be released forthwith, unless he is required in connection with any other case. The Habeas Corpus Petition is allowed.

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Sd/
Asst. Registrar

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Sub Asst.Registrar

To

1. The District Magistrate and District Collector
   Villupuram District, Villupuram.

2. The Secretary to Government, State of Tamil Nadu
   Prohibition and Excise Department
   Fort St. George, Chennai - 9.

3. The Public Prosecutor
   High court, Madras.

4. The Superintendent
   Central Prison, Cuddalore.

5. The Joint Secretry to Govt. of Tamilnadu
   Public (Law & Order) Department,
   Fort St.George, Madras-9.

Pre-Delivery Order in
H.C.P.No.1188 of 2006

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